

# EXHIBIT 7

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

---

L.E., by his next friends and  
parents, SHELLEY ESQUIVEL and  
MARIO ESQUIVEL,  
Plaintiff,

v.

Case No.

BILL LEE, et al.,  
Defendants.

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3:21-cv-00835

VIDEOCONFERENCE DEPOSITION OF  
JENNIFER HEMMELGARN

DATE: Friday, July 29, 2022  
TIME: 9:33 a.m. CDT/10:33 a.m. EDT  
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JOB NO.: 5335467

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## I N D E X

EXAMINATION:	PAGE
By Mr. Strongin	10
By Ms. Jernigan-Johnson	128

## E X H I B I T S

NO.	DESCRIPTION	PAGE
Exhibit 1	Knox County I-171 Policy	41
Exhibit 2	Hemmelgarn E-Mail Re: Trans Athletes	64
Exhibit 3	Mac Pickle E-Mail Re: Trans Athletes	68
Exhibit 4	TSSAA Pre-SB 228 Trans Policy	74
Exhibit 5	SB 228 Language	79
Exhibit 6	Tennessee Code Annotation 49-6-310	80
Exhibit 7	E-Mails Re: Meeting of Title IX Personnel	87
Exhibit 8	KCS RFA Responses	125

(Exhibits retained by counsel.)

1 just ask that you wait for me to complete asking the  
2 question until you answer. And in a similar vein, I  
3 will refrain from asking my next question until you  
4 complete your answer. Is that okay?

5 A Yes.

6 Q Great. And if I ask a question and you do  
7 not understand or need further clarification, I would  
8 ask that you ask me to clarify or to elaborate.  
9 Otherwise, I will assume if you answer the question  
10 that you understood the question. Is that okay?

11 A Yes.

12 Q Okay. Great. And so sort of on a similar  
13 vein, I wanted to first discuss a few terms that I may  
14 be using during the deposition just to make sure we  
15 are on the same page about what they mean.

16 So the first is the word "transgender."  
17 When I use that word, I'm referring to an individual  
18 whose sex assigned at birth is different from the  
19 gender that that person identifies. So, for example,  
20 if someone was assigned the sex of female at birth but  
21 identifies as a male, I will refer to that person as a  
22 transgender boy or transgender male. Does that make



1 sense?

2 A Yes.

3 Q Terrific. And another term I will use is  
4 "cisgender," which means that the person's sex  
5 assigned at birth is in alignment with the gender that  
6 that person identifies in. So for example, if someone  
7 assigned the sex female at birth identifies as female,  
8 I will refer to that person as a cisgender girl or a  
9 cisgender woman. Does that make sense?

10 A Yes.

11 Q Terrific. And I will try and take a break  
12 every hour as well as a somewhat longer break around,  
13 say, 12:30 for lunch. But if you need breaks at any  
14 other time, please just let me know. And the only  
15 thing I would ask is that we take a break after I  
16 finish asking a question and then you answer that  
17 question, and then we could take a break at that  
18 point. Is that all right?

19 A Yes.

20 Q And is there anything that would prevent you  
21 from answering my questions truthfully today?

22 A No.

1           Q     Great, thank you. So now I would like to  
2 ask some questions about the overall structure of the  
3 public school system in Knox County.

4                     So first, would you please tell me what role  
5 Knox County Schools plays in overseeing the education  
6 system in Knox County?

7           A     The Board of -- the Knox County Board of  
8 Education is charged with -- I guess a way to say it  
9 is implementing the state's education system at a  
10 local level. The Knox County Board of Education  
11 develops policies that apply to the School District,  
12 and Knox County Schools employees are charged with  
13 following and implementing those policies.

14          Q     And who composes the Knox County Board?

15          A     It's a nine-member board composed of one  
16 representative from each of the nine districts and is  
17 led by a chair and a vice chair. That would be one of  
18 those nine members is a chair and one of those nine  
19 members is a vice chair.

20          Q     When you say nine districts, does that mean  
21 Knox County is geographically split into nine  
22 subcomponents?

1           A     Correct.

2           Q     And how are the representatives of each of  
3     those districts chosen?

4           A     They are elected.

5           Q     By the general public?

6           A     The -- by the constituents in their  
7     district.

8           Q     Got it. And how are the chair and vice  
9     chair chosen among the nine members?

10          A     There is a nomination and vote  
11     among -- among the nine members.

12          Q     Okay. So only the nine members vote on who  
13     is chair and who is vice chair.

14          A     Correct.

15          Q     Okay. And how is the -- or, sorry. Who is  
16     the head of Knox County Schools?

17          A     The superintendent.

18          Q     And how is the superintendent chosen?

19          A     Superintendent is chosen by the Board of  
20     Education.

21          Q     Okay. And does the superintendent serve for  
22     a set term?

1           A     The -- yes, as determined by the contract  
2     agreed to with the Board.

3           Q     I see. Okay. And is there a limit on how  
4     long someone can serve as superintendent?

5           A     I am not aware of one, if there is.

6           Q     Okay. And who is currently Knox County  
7     Schools superintendent?

8           A     Dr. Jon Rysewyk.

9           Q     When did he begin in that role?

10          A     I believe the official date that he began  
11     was June 4 of 2022.

12          Q     Okay. And who was his predecessor?

13          A     Robert Thomas.

14          Q     And how long did he serve in that role?

15          A     April of 2017, I believe, is when he began  
16     that role.

17          Q     Okay. And how many schools are under the  
18     jurisdiction of Knox County -- or the Knox County --  
19     or the Knox County Board.

20                   MS. JERNIGAN-JOHNSON: Object to the  
21     form.

22          A     The District is composed of 90 schools. Two

1 of those are virtual.

2 Q And so 88 are in person?

3 A Correct.

4 Q And how are those schools roughly  
5 distributed between elementary schools, middle  
6 schools, and high schools numerically?

7 A Roughly 52 -- these are physical  
8 buildings -- 52 elementary, 16 middle, 16 high, and 6  
9 alternative schools --

10 Q Okay.

11 A -- that don't fit within one of those other  
12 three categories.

13 Q Got it. So all of the schools within Knox  
14 County Schools can fit in either elementary, middle,  
15 high, or alternative? There isn't a fifth category of  
16 schools?

17 A Correct, although alternative is -- makes  
18 up -- is made up of a couple different kinds. So  
19 there is a -- a special day school in that category.  
20 There is a dedicated preschool in that category. But  
21 it is six other that don't fit within elementary,  
22 middle, or high.

1           Q     I see. And is Farragut High School one of  
2     the schools under the jurisdiction of Knox County  
3     Schools?

4           A     Yes.

5                     MS. JERNIGAN-JOHNSON: Object to the  
6     form.

7           A     Yes.

8           Q     What sort of oversight or control does Knox  
9     County School have over day-to-day operations of  
10    Farragut High School?

11          A     Day-to-day operations are generally overseen  
12    by the principal of the school building with the  
13    understanding that -- that all principals are  
14    following the same set of Board policies and  
15    procedures. But general oversight of day-to-day  
16    operations would be the school principal.

17          Q     And what about oversight or control over  
18    let's call them programmatic schoolwide policies?  
19    What sort of control or oversight does Knox County  
20    Schools have over that -- those --

21                     MS. JERNIGAN-JOHNSON: Object --

22    //

1 BY MR. STRONGIN:

2 Q -- that an individual school may issue?

3 MS. JERNIGAN-JOHNSON: Object to the  
4 form.

5 A Can you give an example of what you mean by  
6 programmatic school policies?

7 Q So a potential example, and I'm not saying  
8 any individual school has one, but let's say a school  
9 says for any student who has an unexcused -- has five  
10 unexcused absences in a quarter, that student will  
11 serve one afternoon in detention after school,  
12 something like that.

13 A The District has an attendance policy that  
14 is applied uniformly across the District and also a  
15 disciplinary policy that is applied uniformly across  
16 the District.

17 Q Okay. And so circling back to something you  
18 said earlier, the Knox County Board of Education  
19 creates -- does the Knox County Board of Education  
20 create policies that govern the schools in the  
21 District?

22 A Yes.

1       several -- there's several items with regard to  
2       interscholastic athletics that are covered inside the  
3       policy.

4                   MR. STRONGIN:   Okay.   Great.   And now I  
5       would like to introduce Exhibit 1 here.   So, Lucas, if  
6       you could pull up tab 2 on the exhibit list and  
7       introduce that as Exhibit 1, that would be great.   And  
8       then if you could let me know when you have it in  
9       front of you.   It may take a minute.

10                   (Exhibit 1 was marked for  
11                   identification.)

12                   MR. CAMERON-VAUGHN:   It's available.

13                   MR. STRONGIN:   It's available?

14                   MR. CAMERON-VAUGHN:   Yes.

15       BY MR. STRONGIN:

16           Q       Okay.   Ms. Hemmelgarn, do you see the  
17       exhibit in front of you, Exhibit 1?

18           A       I do.   I did.   Yeah, I do, yes.

19           Q       Okay.   And do you see where it says --  
20       there's a box near the top of the screen that says  
21       Knox County Board of Education Policy?

22           A       Yes.



1 Q And then do you see under the word  
2 "education," there's a smaller box that says I-171?

3 A Yes.

4 Q Is this the I-171 policy that you were just  
5 discussing?

6 A Yes --

7 Q And is -- oh, I'm sorry.

8 A The -- the one I -- I reviewed in  
9 anticipation of the deposition did not have the  
10 redlines, but yes.

11 Q So when it did not have the redlines, did it  
12 have those words, just not in redline, or did it not  
13 have those words?

14 A It had those words, yes.

15 Q Okay. Terrific. And so you -- and so is  
16 this policy -- would you consider this policy an  
17 example of an athletics-related policy that the Knox  
18 County Board enacted?

19 A Yes.

20 Q And is this a policy that Knox County  
21 Schools enforces?

22 A Yes.

1           Q     And are all schools in Knox County required  
2     to abide by this policy?

3           A     Yes.

4           Q     How specifically does Knox County Schools  
5     enforce this policy?

6           A     Enforcement would be done by informing  
7     employees and -- and relevant persons that it exists.  
8     As far as -- that is -- that is the initial  
9     enforcement, is informing people that it exists,  
10    employees and -- and relevant persons.

11                     And we have a lot of policies, so typically  
12    outside of that, enforcement comes when we learn that  
13    there has been a violation or there are questions as  
14    to how to implement.

15           Q     So does Knox County Schools perform, let's  
16    call them audits or checks to see if schools are  
17    implementing the policy on its own initiative, or  
18    after that initial enforcement, does Knox County  
19    Schools tends to wait for a violation to be reported?

20                     MS. JERNIGAN-JOHNSON:   Object to the  
21    form.

22           A     There is an expectation that all employees

1 follow Knox County Board of Education policies. There  
2 is information to employees when policies change.  
3 That -- that could be in the form of targeting a  
4 specific audience to tell them of that policy change,  
5 or it could be in the form of being available to see  
6 that at the two public readings or the two public  
7 meetings, first reading and second reading.

8 With regard to audits, I mean in the -- in  
9 the term -- I would say no to audits, but there could  
10 be -- I mean the principal at the school level, if  
11 there has been -- if the -- for example, if the  
12 principal has had to address violations of a certain  
13 policy, there may be more education for all employees  
14 on that policy. That -- that wouldn't be referencing  
15 this one specifically necessarily, just in general all  
16 of our policies.

17 Q And what would happen to a school that  
18 contravened this policy?

19 MS. JERNIGAN-JOHNSON: Object to the  
20 form.

21 A Can -- can you repeat that? I don't think I  
22 understand what you're asking.

1           Q     If Knox County Schools were to learn that a  
2 school had violated the I-171 policy, would there be  
3 sanctions or consequences for the school?

4                     MS. JERNIGAN-JOHNSON: Object to the  
5 form.

6           A     The -- if there was a policy violation  
7 reported, the District would do an investigation to  
8 determine if there had been a policy violation and to  
9 what extent that existed. And then, yes, there would  
10 be action taken.

11          Q     Is there a particular -- what would that  
12 particular action be?

13          A     It would depend on the circumstances.

14          Q     Okay. And so now I'd like for you to look  
15 at the second paragraph of the I-171 policy, the  
16 paragraph beginning with, "The bylaws of." Do you see  
17 that paragraph?

18          A     Yes.

19          Q     What is the Tennessee Secondary School  
20 Athletic Association?

21          A     It is an association that governs  
22 competitive athletics across the state at the

1 secondary level. That -- that would be the most  
2 concise way that I think I could describe it.

3 Q And what role does Knox County Schools play  
4 with the Tennessee Secondary School Athletic  
5 Association?

6 MS. JERNIGAN-JOHNSON: Object to the  
7 form.

8 A TSSAA is a membership organization, so  
9 members that elect to participate are governed by the  
10 bylaws or rules of TSSAA. Knox County Schools, high  
11 schools, each of the 16 traditional high schools are  
12 members of TSSAA.

13 Q So is membership at the individual school  
14 level, then?

15 A Membership is at the individual school  
16 level, yes.

17 Q And is Farragut High School a member of the  
18 TSSAA?

19 A Yes.

20 Q Is TSSAA membership a prerequisite to a  
21 school having an interscholastic athletic program?

22 MS. JERNIGAN-JOHNSON: Object to the

1 form.

2 A No. It -- it is a -- not to my  
3 understanding, but all traditional high schools in  
4 Knox County Schools have opted to become members in  
5 TSSAA.

6 Q Is compliance with TSSAA policies -- strike  
7 that.

8 What discretion or leeway does the Knox  
9 County Board of Education have to enact or adopt a  
10 policy inconsistent with TSSAA bylaws or policies?

11 MS. JERNIGAN-JOHNSON: Object to the  
12 form.

13 A Knox County Schools policies would not -- do  
14 not only apply to interscholastic athletics. So Knox  
15 County Schools policies would not only apply to  
16 members of TSSAA.

17 Q If Knox County Schools -- I'm sorry.

18 If the Knox County School -- County Board of  
19 Education wanted to adopt a policy pertaining to  
20 interscholastic athletics that was inconsistent with a  
21 TSSAA policy, which policy would Knox County Schools  
22 enforce?

1 MS. JERNIGAN-JOHNSON: Object to the  
2 form.

3 MS. BERGMEYER: Same objection.

4 A Knox County Schools would enforce the Knox  
5 County Board of Education policy.

6 Q Okay. And what -- let me put it this way.  
7 Do individual schools have authority or  
8 discretion to not follow TSSAA policies?

9 MS. JERNIGAN-JOHNSON: Object to the  
10 form.

11 MS. BERGMEYER: Same objection.

12 A Can you say that again, please?

13 Q What discretion or leeway do individual  
14 schools in Knox County have to not follow TSSAA  
15 policies?

16 A Member schools upon membership are choosing  
17 for interscholastic sports to be governed by TSSAA  
18 policies. As -- as far as -- I don't think I can  
19 speak on behalf of TSSAA as to what -- if that is what  
20 you are asking me. I don't -- I don't think I'm  
21 understanding your question appropriately.

22 Q I guess my question is -- why don't

1 we -- let's strike that. I will ask -- I will ask  
2 this question.

3 What -- or, sorry. What entity is  
4 responsible for enforcing TSSAA policies?

5 A TSSAA.

6 Q Does Knox County Schools enforce TSSAA  
7 policies?

8 A Not to my knowledge.

9 Q Has Knox County Board of Education adopted a  
10 policy that the interscholastic athletic programs of  
11 schools within Knox County Schools abide by TSSAA  
12 policies?

13 A The interscholastic athletics policy, the --  
14 the paragraph you were just referencing, says, "Bylaws  
15 of the TSSAA shall regulate the operation and control  
16 of secondary athletics."

17 Q So if the TSSAA changed its bylaws or  
18 policy, would that amendment to the TSSAA bylaws and  
19 policy automatically apply to the Knox County Schools  
20 without further action from the Knox County Board of  
21 Education?

22 MS. JERNIGAN-JOHNSON: Object to the



1 form.

2 A It would apply to the members of TSSAA.

3 Q Okay. Thank you. So what -- so you  
4 testified earlier that if the TSSAA and the Knox  
5 County Board of Education adopted policies that were  
6 inconsistent with each other, the Knox County  
7 School -- Knox County Schools would enforce the policy  
8 of the Knox County Board of Education; is that  
9 correct?

10 MS. JERNIGAN-JOHNSON: Object to the  
11 form.

12 A Yes.

13 Q In that situation where the TSSAA and Knox  
14 County Board of Education have adopted inconsistent  
15 policies, what policy should individual schools in  
16 Knox County Schools follow?

17 MS. JERNIGAN-JOHNSON: Object to the  
18 form.

19 A If -- if TSSAA and Knox County Schools  
20 had -- had policies that said different things, what  
21 should our schools follow? Is that what the question  
22 is?

1 Q Yes.

2 A Okay. The -- the schools would follow Knox  
3 County's Board of Education policies if they were  
4 consistent -- inconsistent.

5 Q Okay. Thank you. So now I'm going to  
6 switch gears a little bit away from the TSSAA and ask  
7 you, Ms. Hemmelgarn, Are interscholastic sports teams  
8 in Knox County Schools separated by sex?

9 A Some are, yes.

10 Q Are majority of teams separated by sex?

11 A Yes.

12 Q What are some examples of teams that are not  
13 separated by sex?

14 A Football is one example.

15 Q Oh, I'm sorry.

16 A That's one example that comes to mind. Do  
17 you want -- are you asking for an exhaustive list,  
18 or -- you asked for an example.

19 Q Oh, yeah. No, that's fine. If you had to  
20 estimate, would you say more than three-  
21 quarters -- would you say roughly three-quarters or  
22 more of interscholastic teams in Knox County Schools

1 are separated by sex?

2 MS. JERNIGAN-JOHNSON: Object to the  
3 form.

4 MS. BERGMEYER: Same objection.

5 A Say that again?

6 Q Would you say that roughly three-quarters or  
7 more of the interscholastic athletic teams in Knox  
8 County Schools are separated by sex?

9 MS. BERGMEYER: Same objection.

10 A I don't know a specific percentage, but I  
11 would agree that more are separated by sex than are  
12 not.

13 Q Okay. And so you gave the example of the  
14 football team as a team that is not separated by sex.  
15 What determines whether or not -- I guess -- or strike  
16 that.

17 Has football ever been a sport that has been  
18 separated by sex in Knox County, to your knowledge?

19 A To my knowledge there has never been a  
20 girls' and boys' football team.

21 Q Okay. To your knowledge have there been  
22 sports that at one time have or that had or that

1 currently have a girls' team and a boys' team but  
2 either -- sorry, strike that.

3 Do sports that have girls' and boys' teams  
4 now, have they always had girls' and boys' teams?

5 MS. JERNIGAN-JOHNSON: Object to form.

6 MS. BERGMEYER: Object to form.

7 BY MR. STRONGIN:

8 Q To your knowledge.

9 A "Always" is a strong word. I would say  
10 probably not, depending on participation. There's  
11 not -- all sports that exist right now may not have  
12 always existed at a specific school location based on  
13 participation.

14 Q Okay. So is it possible for a sport that at  
15 one time does not have separate girls' and boys' teams  
16 to, because of a participation increase, subsequently  
17 have separate boys' and girls' teams?

18 MS. JERNIGAN-JOHNSON: Object to the  
19 form.

20 MS. BERGMEYER: Same objection.

21 A Can you repeat the question?

22 Q Sure. Is it possible for a team that

1 currently is not separated into girls' and boys' teams  
2 to, in the future if more individuals are interested  
3 in participating in that sport, that separate boys'  
4 and girls' teams would develop?

5 A Is it possible? Is it possible that new  
6 sports can be added under TSSAA, like from a  
7 competition perspective? I would say, yes, it's  
8 possible.

9 Q Okay. Are teams automatically -- or, sorry.  
10 Strike that.

11 Are any of the teams that are not separated  
12 by sex have both -- do any of those teams have both  
13 boys and girls competing on the same team?

14 MS. JERNIGAN-JOHNSON: Object the form.

15 A Currently, the District is not aware of that  
16 situation occurring, any coed team.

17 Q Is the District aware of any coed teams  
18 within the last five years?

19 A There has previously been a female that  
20 played on the football team.

21 Q Okay. So in terms of -- so when you say a  
22 female has played on the football team, does that mean

1       that in a team of however many are on the football  
2       team, one member was a female and every other member  
3       was male?

4           A       In -- in that instance, yes.

5           Q       And are there other instances of both males  
6       and females being on the same interscholastic team in  
7       Knox County Schools?

8           A       Not to my knowledge in the last five years.  
9       As far as ever, I -- I don't know.

10          Q       Is there a requirement that teams be  
11       separated by sex?

12                   MS. BERGMEYER:   Object to form.

13                   MS. JERNIGAN-JOHNSON:   Object to form.

14          A       Which teams are you referencing?

15          Q       What is -- are there separate boys' golf and  
16       girls' golf teams in Knox County Schools?

17          A       Yes.

18          Q       Is the separation of the golf teams into a  
19       boys' golf team and a girls' golf team, are schools  
20       required to have separate boys' golf team and girls'  
21       golf teams?

22                   MS. JERNIGAN-JOHNSON:   Object to the

1 form.

2 A Schools are required to have boys play on  
3 the boys' golf team and girls play on the girls' golf  
4 team, because both of those are -- are recognized  
5 teams under TSSAA. Not all of our schools have both  
6 because of participation.

7 Q Okay. So TSSAA -- so does TSSAA make an  
8 initial determination over which sports will have both  
9 boys' and girls' teams?

10 MS. JERNIGAN-JOHNSON: Object to the  
11 form.

12 MS. BERGMEYER: Same objection.

13 A TSSAA has a list of sports, and girls' golf  
14 and boys' golf are included on those, if that answers  
15 the question.

16 Q As opposed to just listing golf.

17 A Correct.

18 Q Okay. And then you said that some sports at  
19 some schools do not have separate boys and girls teams  
20 because of participation.

21 A Do not have one of each, one of each of  
22 those teams based on participation. They would be

1 separate at those schools, but there's not both teams  
2 at each school.

3 Q Okay. Got it. And boys and -- so do you  
4 know -- so Farragut High School has a -- does Farragut  
5 High School have a separate boys' golf team and girls'  
6 golf team?

7 A Yes.

8 Q And do all high schools in Knox County have  
9 separate boys' golf teams and girls' golf teams?

10 A No.

11 Q Do you know which schools do not have  
12 separate boys' golf teams and girls' golf teams?

13 A I -- I can't list which schools don't have  
14 both teams that -- I will say again that all of them  
15 have separate teams. There's just not enough  
16 participation at some schools to have created one or  
17 both of those teams.

18 Q When you say "not enough participation," if  
19 a single -- how much participation do you need to  
20 create a team? Is one student enough to create a  
21 team?

22 MS. BERGMEYER: Object to form.



1 MS. JERNIGAN-JOHNSON: Same objection.

2 A One student is enough to consider creating a  
3 team, yes.

4 Q And would that consideration of creating a  
5 team result in a team being created?

6 MS. JERNIGAN-JOHNSON: Object to the  
7 form.

8 MS. BERGMEYER: Same objection.

9 A A possibility of a team being created, yes.

10 Q If a school had enough boys interested in  
11 playing boys' golf to form a golf team and a single  
12 girl interested in playing golf, and the school --  
13 would a school be able to not create a girls' golf  
14 team, or would the school have to create a girls' golf  
15 team?

16 MS. JERNIGAN-JOHNSON: Object to the  
17 form.

18 MS. BERGMEYER: Same objection.

19 A I think that there would be equal  
20 consideration for both. But if there are  
21 certain -- I -- I don't know -- I don't want to answer  
22 in absolutes, because there may be certain thresholds

1 to becoming a member of that team. So I don't  
2 know -- I don't think I could answer broadly that  
3 question an absolute yes. There would be a  
4 consideration equally, but without knowing the  
5 circumstances, I don't think the District could say if  
6 one person wanted to try out for two -- for a  
7 nonexistent team for boys and for girls, if one person  
8 wanted to try out for each, I don't think I could say  
9 that there would be an absolute yes to a creation of a  
10 team, because some of it may depend on what the  
11 qualifications are to make the team, should it exist.

12 Q Okay. Do you recall testifying earlier that  
13 one girl participated on a football team in Knox  
14 County Schools?

15 A I do.

16 Q Is football a sport that TSSAA has said has  
17 a girls' and a boys' team?

18 A No.

19 Q Okay. And was football -- the years -- that  
20 girl on the football team is no longer -- is that girl  
21 who participated on the football team that you  
22 testified about, did she play on the football team

1       this past season?

2           A       No.

3           Q       Was the game played any differently when  
4       that girl was on the football team versus this past  
5       season when she was not?

6                   MS. BERGMEYER: Object to the form.

7           A       Not to my knowledge.

8           Q       Okay. And were there -- were there any  
9       concerns -- did Knox County Schools have any concerns  
10      over the displacement of female athletes with that  
11      student's participation on the football team?

12                  MS. JERNIGAN-JOHNSON: Object to the  
13      form.

14                  MS. BERGMEYER: Object to form.

15          A       Can you restate your question, please?

16          Q       Sure. Was the -- was Knox County Schools  
17      concerned that having the female student who  
18      participated on the football team, that her  
19      participating on that team would reduce athletic  
20      opportunities for other female student athletes in  
21      Knox County Schools?

22                  MS. JERNIGAN-JOHNSON: Object to the

1 form.

2 MS. BERGMEYER: Same objection.

3 A I do not know.

4 Q Okay. And what -- you know what? Strike  
5 that.

6 I think we have been going for a little over  
7 an hour now, so if you would like to take a break, we  
8 can do that, maybe for five minutes?

9 A Okay. Can I clarify one of my responses?

10 Q Sure.

11 A I am not aware of any TSSAA bylaws, current  
12 TSSAA bylaws that conflict with Knox County Board of  
13 Education policies.

14 Q Okay. Thank you. So I will make a note of  
15 that.

16 MR. STRONGIN: And then, I guess, yeah,  
17 should we take a break for five minutes? Do we have  
18 breakout rooms for ...

19 THE TECH CONCIERGE: Sure.

20 UNIDENTIFIED SPEAKER: Yesterday we  
21 just muted.

22 MR. STRONGIN: Oh.

1 form.

2 MS. BERGMEYER: Same objection.

3 A Can you -- can you restate the question,  
4 please?

5 Q Sure. If a transgender student athlete  
6 prior to March 2021 wanted to participate in an  
7 interscholastic athletics team in Knox County, is  
8 there any reason to think that that transgender  
9 student's participation would not have been governed  
10 by this TSSAA/TMSAA transgender policy?

11 MS. JERNIGAN-JOHNSON: Object to the  
12 form.

13 A I'm not aware of when this policy was  
14 implemented and if it's -- how long it was in effect,  
15 if it was in effect, if it is still in effect.

16 Q Okay. Thank you. So now, Ms. Hemmelgarn, I  
17 want to turn to SB 228, which is the law at issue in  
18 this case. But before I do, would you please tell me,  
19 are you familiar with -- or, I'm sorry. Is Knox  
20 County Schools familiar with SB 228?

21 A Yes.

22 Q And are you familiar with SB 228?

1           A     Yes. I have traditionally referred to it  
2     as -- as its citation in the Tennessee code annotated,  
3     but yes.

4           Q     Okay. Great. And what is your  
5     understanding of what SB 228 -- of what SB 228 does?

6                     MS. JERNIGAN-JOHNSON: Objection. I  
7     want to object, because she is here on behalf of Knox  
8     County Schools. So are you asking her personal  
9     understanding or the District's understanding?  
10    BY MR. STRONGIN:

11          Q     I will rephrase. What is the District's  
12     understanding of Knox County Schools -- or what is the  
13     District's understanding of what SB 228 does?

14          A     Sure. The --

15                     MS. JERNIGAN-JOHNSON: Thank you.

16          A     -- District's understanding is that SB 228  
17     first requires local education agencies to institute a  
18     policy, but also that essentially implements the law  
19     but that the -- the effect of it is that for gender-  
20     specific sports, students must play on the sport team  
21     that is aligned with the gender assigned at birth.

22          Q     Okay. Great.

1 MR. STRONGIN: And, Lucas, if you could  
2 please introduce tab 6 as Exhibit 5.

3 (Exhibit 5 was marked for  
4 identification.)

5 MR. CAMERON-VAUGHN: All right. It  
6 should be available.

7 BY MR. STRONGIN:

8 Q And, Ms. Hemmelgarn, if you could let me  
9 know when you have it in front of you.

10 A Okay.

11 Q Okay. Great. And I want to give you a  
12 chance to review the document. So if you could just  
13 let me know when you've had a chance to review it.

14 A Okay.

15 Q Do you recognize this document?

16 A I do.

17 Q What is the document?

18 A It is language in SB 228.

19 Q Okay. And would you please read -- it's  
20 about two-thirds, three-quarters of the way, maybe a  
21 little more, down at the bottom of the first page. Do  
22 you see section 1, and then subparagraph -- or

1 paragraph A? And I would ask for you to please read  
2 that, and then let me know when you are done.

3 A Okay. Okay.

4 Q And what did section 1(a) provide? What did  
5 that -- what did that section ...

6 A It -- do you want me to just read it or ...

7 Q All right. So what is -- what is the Knox  
8 County Schools understanding of section 1(a)?

9 A Knox County Schools understanding, I think,  
10 would be reflected in the changes to policy I-171, but  
11 it -- I mean the language is a -- "A student's gender  
12 for purposes of participation in a public middle  
13 school or high school interscholastic athletic  
14 activity or event must be determined by the student's  
15 sex at the time of the student's birth, as indicated  
16 on the original birth certificate."

17 MR. STRONGIN: Terrific. And so now,  
18 Lucas, could I ask you to please introduce tab 7,  
19 Exhibit 6.

20 (Exhibit 6 was marked for  
21 identification.)

22 //



1 minutes, either. So I am happy to defer to the group  
2 on if we want to do lunch now or wait a bit.

3 MS. JERNIGAN-JOHNSON: Do you think you  
4 have 30 minutes?

5 MR. STRONGIN: I think we can do this  
6 in 30 minutes or less.

7 MS. JERNIGAN-JOHNSON: Okay. Then I'm  
8 good. I think we are good to keep going.

9 MR. STRONGIN: Okay. Great. So let's  
10 keep going, then.

11 So now can we pull up, Lucas, go back  
12 to Exhibit 6, tab 7, please.

13 BY MR. STRONGIN:

14 Q And then, Ms. Hemmelgarn, if you could let  
15 me know when you -- or you all may be able to do that  
16 now, too, actually. I'm not sure.

17 Okay. So if you could let me know when you  
18 have Exhibit 6 up.

19 A Okay.

20 Q And would you please look at paragraph B2,  
21 and if you could read that paragraph and then let me  
22 know when you finished reading it.

1           A     Okay.

2           Q     And has Knox County Schools and/or the  
3     County Board adopted and enforced a policy to ensure  
4     compliance with subsection A and the rules promulgated  
5     pursuant to subdivision B(1) in the public schools  
6     that they govern?

7                     MS. JERNIGAN-JOHNSON: Object to the  
8     form.

9                     MS. BERGMEYER: Same objection.

10          A     Yes.

11          Q     Was this policy the revised I-171 policy we  
12     had discussed earlier that is Exhibit 1, tab 2?

13          A     I-171 you said; right?

14          Q     Yes.

15          A     I don't recall which exhibited it is, but  
16     yes.

17          Q     Okay. And when was that policy promulgated?

18          A     Believe it was discussed at -- do you mean  
19     when did it go into effect, or when was it first --

20          Q     When did it go into effect?

21          A     It went into effect, if I recall, those  
22     changes did in September of 2021.

1           Q     Okay. And what basis was given for enacting  
2     that policy?

3                   MS. JERNIGAN-JOHNSON: Object to the  
4     form.

5                   MS. BERGMAYER: Same objection.

6           A     To comply with state law.

7           Q     Okay. And if section 49-6-310(a) had never  
8     become operative law in Tennessee, would the Knox  
9     County Board of Education have enacted the changes to  
10    I-171 we just discussed?

11                   MS. JERNIGAN-JOHNSON: Object to the  
12    form.

13                   MS. BERGMAYER: Same objection.

14           A     I do not know.

15           Q     Okay. And if section 49-6-310(a) were to no  
16    longer be operative law in Tennessee, would Knox  
17    County Schools continue to enforce the policy changes  
18    to I-171 that it enacted in response to SB 228?

19                   MS. JERNIGAN-JOHNSON: Object to the  
20    form.

21                   MS. BERGMAYER: Same objection.

22           A     I -- I do not know. It -- state law would

1 not be the basis for enforcement. Right now there's a  
2 citation to state law in the policy with regard to the  
3 language.

4 Q Okay. And as of now, you don't know if with  
5 that state law basis no longer operative Knox County  
6 Schools would implement the policy on another basis;  
7 is that right?

8 MS. JERNIGAN-JOHNSON: Object to the  
9 form.

10 MS. BERGMAYER: Same objection.

11 A No.

12 Q No, you don't know if Knox County Schools  
13 would continue implementing it?

14 A Correct.

15 Q Okay. And are schools under the  
16 jurisdiction of Knox County Schools currently allowed  
17 to roster student athletes on sex-separated  
18 interscholastic athletic teams according to their  
19 gender identity even if the gender identity does not  
20 align with the student's sex at the time of birth as  
21 reflected on the student's original birth certificate?

22 MS. JERNIGAN-JOHNSON: Object to the

1 form.

2 MS. BERGMEYER: Same objection.

3 A That was a long question. Can you say that  
4 again?

5 Q Sure. So if a -- so are schools under Knox  
6 County Schools' jurisdiction able to roster a student  
7 athlete on a sex-separated sports team on the team  
8 that aligns with that student's gender identity if  
9 that gender identity is different from the sex  
10 assigned at birth on the student's original birth  
11 certificate?

12 MS. JERNIGAN-JOHNSON: Object to the  
13 form.

14 MS. BERGMEYER: Same objection.

15 A Knox County Schools -- schools under Knox  
16 County Schools' jurisdiction are only allowed to  
17 roster students on gender-specific sports team whose  
18 gender assigned on the original birth certificate  
19 matches that gender sports team.

20 Q Okay. And what steps or actions does Knox  
21 County Schools take to ensure that individual schools  
22 are complying with I-171?

1 MS. JERNIGAN-JOHNSON: Object to the  
2 form.

3 MS. BERGMEYER: Same objection.

4 A Informing school principals, athletic  
5 directors, and then athletic directors informing their  
6 coaching staff that the policy and state law exist.

7 Q Are there any additional steps that Knox  
8 County Schools takes?

9 MS. JERNIGAN-JOHNSON: Object to the  
10 form.

11 A I can't think of any right now.

12 Q Okay. And are students required to submit  
13 an original birth certificate to participate in  
14 interscholastic athletics?

15 A Students are required to submit a birth  
16 certificate at some point during the enrollment  
17 process, enrollment into Knox County Schools.

18 Q And then is that the only time they are  
19 required to submit a birth certificate?

20 A I do not know. I do not know if -- if there  
21 are -- would be a birth certificate required at  
22 a -- during enrollment in a different school, for

1 example. I don't know if that is the only time.

2 Q Okay. And have coaches been given any  
3 instruction on how to enforce this policy or this law?

4 A They've been given instruction on the law.  
5 As far as specific enforcement, I do not know.

6 Q Okay. And what would happen to a school if  
7 it violated SB 228?

8 MS. BERGMEYER: Object to form.

9 A I believe that the District -- well, if the  
10 school violated SB 228, there's a -- in the law there  
11 is a reporting path for parents that -- that are  
12 affected. But I don't -- I will put it right in front  
13 of me so I can get the exact language. But there is a  
14 reporting path for parents to report violations, so it  
15 would be addressed in that manner. But I believe that  
16 if a school violated -- if there was a true violation,  
17 that the -- potentially there could be a loss of a  
18 portion of funding to the District.

19 Q So would that loss of funding be  
20 specifically earmarked to the offending school, or  
21 would the entire District lose that portion of its  
22 funding?

1 MS. JERNIGAN-JOHNSON: Object to the  
2 form.

3 MS. BERGMEYER: Object to form.

4 A We have not had that happen, so I'm not sure  
5 what it would look like.

6 Q Would Knox County Schools or the County  
7 Board impose any sanction on the specific school  
8 beyond that loss of funding that you just discussed?

9 MS. JERNIGAN-JOHNSON: Object to the  
10 form.

11 MS. BERGMEYER: Same objection.

12 A Potentially for -- for individuals involved  
13 in violating a Board policy. We have a progressive  
14 discipline model for violation of Board policies.

15 Q What are some of the consequences of  
16 violating Board policies in that policy that you  
17 talked about in ascending order, please.

18 A Progressive discipline is oral warning, and  
19 then we have what is called a professional  
20 communication record, then a conference of concern,  
21 written reprimand, suspension without pay, and  
22 termination.



1           Q     Okay. And the consequence of losing funding  
2     for failure to comply with SB 228 what would trigger  
3     that -- strike that.

4                     Is that consequence found in Knox County  
5     law?

6                     MS. JERNIGAN-JOHNSON: Object to the  
7     form.

8                     MS. BERGMEYER: Same objection.

9                     THE WITNESS: I believe the consequence  
10    is found in state law.

11           Q     Okay. Thank you. And now I would like to  
12    ask you to have Exhibit 6 in front of you, please,  
13    which is the Tennessee Code section that I think you  
14    may have just been looking at on paper. And I would  
15    like to turn to subsection C of that exhibit, please.  
16    And let me know when you've had a chance to review  
17    that.

18           A     Sure. This is what I was trying to  
19    articulate earlier, but not very eloquently.

20           Q     And that was going to be my next question,  
21    was is this the parental reporting process you were  
22    just talking about?

1 THE REPORTER: Okay. We are back on  
2 the record at 1:38 p.m. Eastern Daylight Time. Go  
3 ahead.

4 BY MR. STRONGIN:

5 Q Thank you very much. Ms. Hemmelgarn, I want  
6 to go back to something. You testified earlier, do  
7 you recall, that if SB 228 was no longer operative  
8 Tennessee law that the state law based -- do  
9 you -- strike that.

10 Ms. Hemmelgarn, do you recall testifying  
11 that if SB 228 was no longer operative Tennessee law  
12 that state law would not be the basis for the revised  
13 I-171 policy but the I-171 revised policy may still be  
14 in effect? Do you recall testifying that?

15 MS. JERNIGAN-JOHNSON: Object to the  
16 form.

17 A I don't recall stating it in that way, no.  
18 What I recall saying -- you asked if the -- if I  
19 remember correctly, you asked if the policy would  
20 still exist if state law were changed, and I said I  
21 don't know. I mean I don't know of a reason that -- I  
22 don't know that there has been discussions or

1 consideration as to having that language absent a  
2 requirement to.

3 Q If state law changed, if SB 228 was no  
4 longer operative law, would Knox County Board -- would  
5 the Knox County Board of Education need to take an  
6 affirmative act to change the current I-171 policy?

7 MS. JERNIGAN-JOHNSON: Object to form.

8 MS. BERGMAYER: Same objection.

9 A Say that again, please?

10 Q If SB 228 was no longer operative state law  
11 in Tennessee, would the Knox County Board of Education  
12 need to take an affirmative action to change what is  
13 currently I-171?

14 MS. JERNIGAN-JOHNSON: Object to form.

15 A If the District -- if the Board of Education  
16 intended to change a Board policy based on a change in  
17 state law, then, yes, action would be required.

18 Q Okay. Thank you. So now, Ms. Hemmelgarn,  
19 I'm going to ask some questions about the plaintiff in  
20 this case, L.E., and his family. Prior to the filing  
21 of this lawsuit, had Knox County Schools had any  
22 specific interaction with L.E. and/or his parents?

1           A     Well, that aren't assigned -- all employees  
2     are employees of Knox County Schools, not employees of  
3     individual schools.

4           Q     So that are assigned to specific schools.

5           A     They are assigned to schools but not  
6     employed by the schools.

7           Q     Right, yeah.

8           A     The e-mail from mom of plaintiff in March of  
9     2021 to Dr. Bartlett and Dr. Bartlett's response  
10    probably was shared with -- with someone outside of  
11    Farragut High School.

12          Q     Okay. Got it. Thank you. Do you know whom  
13    specifically -- with whom specifically that was  
14    shared?

15          A     No. I -- I saw it at some point. I don't  
16    know who else specifically it was shared with, and  
17    I -- I don't know who else specifically it was shared  
18    with.

19          Q     Okay. And if L.E. were to attempt to  
20    participate on the boys' golf team at Farragut High  
21    School, would he be eligible to do so?

22                   MS. JERNIGAN-JOHNSON: Object to the

1 form.

2 MS. BERGMEYER: Object to form.

3 A To my knowledge, L.E. did not attempt to  
4 participate, but participation in interscholastic  
5 athletics would be subject to state law, so the change  
6 to I-171.

7 Q So in that -- so recognizing that, would  
8 L.E. be eligible to participate on the boys' golf team  
9 at Farragut High School?

10 MS. JERNIGAN-JOHNSON: Object to form.

11 MS. BERGMEYER: Object to form.

12 A Recognizing -- when you say "recognizing  
13 that," you mean recognizing state law? Or what  
14 do -- what is "that"?

15 Q "That" is that his participation is subject  
16 to state law in the revised I-171 policy.

17 A Yeah. So --

18 MS. BERGMEYER: Same objection.

19 A -- in -- participation in interscholastic  
20 athletics would be governed by state law, and state  
21 law captured in summary form in I-171.

22 Q Okay. So given the applicability of state

1 law and the form that it is captured in the I-171,  
2 would plaintiff L.E. be eligible to play on the boys'  
3 golf team at Farragut High School?

4 MS. BERGMEYER: Object to form.

5 MS. JERNIGAN-JOHNSON: Same objection.

6 A No.

7 Q Okay. And if L.E. were a cisgender boy,  
8 would he be able to try out and, if he made it,  
9 participate on the boys' golf team?

10 MS. JERNIGAN-JOHNSON: Object to the  
11 form.

12 MS. BERGMEYER: Same objection.

13 A If a -- if a student that was -- had an  
14 assigned gender of male on their original birth  
15 certificate attempted to try out for a male sports  
16 team, yes, they would be allowed to try out for that  
17 sports team.

18 Q And under current law, if L.E. wanted to try  
19 out for a golf team at Farragut High School, what golf  
20 team would he have to try out for?

21 MS. BERGMEYER: Object to form.

22 A L.E. --

1 MS. JERNIGAN-JOHNSON: Same objection.  
2 Sorry.

3 A Sorry. L.E. would have to try out for the  
4 gender-specific golf team that aligns with the gender  
5 assigned on the original birth certificate.

6 Q And which gender would that be for L.E.?

7 A I don't know that I have seen the original  
8 birth certificate.

9 Q Okay.

10 A Knox -- Knox County Schools likely has a  
11 copy of it, and I have not -- I have not seen it.

12 Q Okay. Thank you. And so now,  
13 Ms. Hemmelgarn, I'm going to ask you, you testified  
14 earlier that Knox -- do you recall testifying earlier  
15 that Knox County Schools has a title IX coordinator?

16 A I do, yes.

17 Q Do you recall testifying earlier that Knox  
18 County Schools has a title IX coordinator to help  
19 ensure compliance with title IX?

20 A I do.

21 Q Why does Knox County Schools abide by title  
22 IX?

1 be eligible to participate on the boys' golf team at  
2 Farragut High School?

3 MS. JERNIGAN-JOHNSON: Object to the  
4 form.

5 A No.

6 MR. STRONGIN: Thank you,  
7 Ms. Hemmelgarn. Those are all the questions I have.

8 MS. BERGMEYER: I have no questions.  
9 Thank you.

10 MS. JERNIGAN-JOHNSON: I'm sorry,  
11 Stephanie. Did you say you do have questions?

12 MS. BERGMEYER: No, I do not.

13 MS. JERNIGAN-JOHNSON: Oh, okay.  
14 Sorry. I just have a couple of questions.

15 EXAMINATION

16 BY MS. JERNIGAN-JOHNSON:

17 Q So, Ms. Hemmelgarn, we talked earlier in the  
18 day about sports opportunities in Knox County. Do you  
19 recall when we discussed that?

20 A Yes.

21 Q And you mentioned football as an example of  
22 a sport where both boys and girls can participate on



1 the same team; is that right?

2 A Yes.

3 Q Are you aware of other sports or activities  
4 that both boys and girls can participate on the same  
5 team?

6 A Yes. There are other non-gender specific  
7 sports. Do you want me to list the ones I recall?

8 Q Yes, if you can list --

9 A Okay.

10 Q -- the ones you recall.

11 A I believe that, if I recall correctly,  
12 soccer is not -- there is soccer and girls' soccer, so  
13 it is not designated boys and -- boys and girls. It's  
14 just soccer and girls' soccer. I believe that  
15 wrestling is the same and also bowling. If I remember  
16 correctly, I don't believe that baseball is designated  
17 as boys' baseball, but softball is designated as  
18 girls' softball.

19 I would have to consult the TSSAA bylaws,  
20 which I can do that, if that's okay.

21 Q Thank you.

22 A Okay. So what I am looking at is the TSSAA

1 bylaws from 2021 to 2022. So that's -- wrestling is  
2 listed as wrestling and girls' wrestling, so not boys'  
3 wrestling. Bowling, the same. Football is not  
4 designated as gender-specific. Baseball is not  
5 designated as gender-specific. Soccer is not  
6 designated as gender-specific in one season, but there  
7 is a girls' soccer as well. There are two activities  
8 that are not listed as sports under TSSAA, and that is  
9 cheerleading and dance as well.

10 Q So based on your review of the TSSAA  
11 handbook, it's your understanding that there are coed  
12 sports and activities in Knox County Schools.

13 A Opportunities, yes.

14 Q Okay. And finally, was policy I-171 revised  
15 because of the passage of Senate Bill 228 that  
16 required us -- that required Knox County to adopt a  
17 policy as reflected in that bill?

18 A Yes.

19 MS. JERNIGAN-JOHNSON: That is all the  
20 questions I have.

21 MR. STRONGIN: I have no more  
22 questions.

1 MS. BERGMEYER: No more questions,  
2 thank you.

3 THE REPORTER: Okay. If that is all we  
4 have, then do we want to give the witness a chance to  
5 read and sign?

6 MS. JERNIGAN-JOHNSON: Do you want to  
7 review and sign your transcript?

8 THE WITNESS: Yes.

9 THE REPORTER: Okay. Then we are off  
10 the record at 2:06 p.m. Eastern Daylight Time.

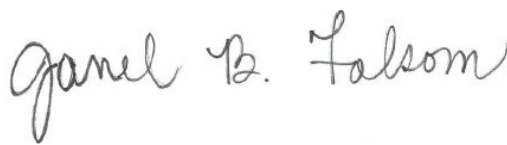
11 (Signature reserved.)

12 (Whereupon, at 1:06 p.m. CDT/2:06 p.m.

13 EDT, the proceeding was concluded.)  
14  
15  
16  
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19  
20  
21  
22

## 1 CERTIFICATE OF DEPOSITION OFFICER

2 I, JANEL FOLSOM, the officer before whom the  
3 foregoing proceedings were taken, do hereby certify  
4 that any witness(es) in the foregoing proceedings,  
5 prior to testifying, were duly sworn; that the  
6 proceedings were recorded by me and thereafter reduced  
7 to typewriting by a qualified transcriptionist; that  
8 said digital audio recording of said proceedings are a  
9 true and accurate record to the best of my knowledge,  
10 skills, and ability; that I am neither counsel for,  
11 related to, nor employed by any of the parties to the  
12 action in which this was taken; and, further, that I  
13 am not a relative or employee of any counsel or  
14 attorney employed by the parties hereto, nor  
15 financially or otherwise interested in the outcome of  
16 this action.



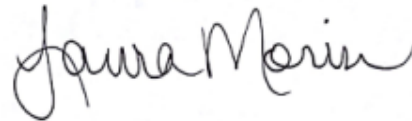
17 JANEL FOLSOM

18 Notary Public in and for the  
19 Commonwealth of Virginia  
20

21 [X] Review of the transcript was requested.  
22

## CERTIFICATE OF TRANSCRIBER

I, LAURA MORIN, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



LAURA MORIN